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#18/C. LaRoda
Decision
3/17/95

In re Application :
Stuart Corr :
Serial No. 07/957,080 : DECISION ON PETITION
Filed: October 7, 1992 :
For: LUBRICANTS :

This is a decision on the Petition filed February 7, 1995 requesting reopening of prosecution due to the issuance of a new ground of rejection by the examiner on appeal.

The facts reveal that in the Final Office Action each of the claims were rejected under 35 USC 103 as unpatentable over WO '849 in view of EP 979. It appears on the record that the examiner relied upon WO '849 to teach applicants working fluid system. The secondary reference relied upon by the examiner taught that the specific refrigerants were well known in the art and could be used in these systems.

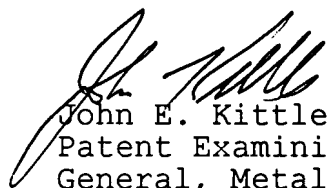
Applicant in his information disclosure statement cites numerous references wherein the refrigerants are taught. Among the references submitted by applicant are those to Shankland and Shiflett.

The Examiners Answer has withdrawn the single secondary reference teaching one or more refrigerants and has substituted therefore, three references specifically drawn to the refrigerant systems relied upon by applicant in his claims, two of them having been cited by applicants in the references submitted in the instant application record.

MPEP 1208.01 provides for new grounds of rejection upon appeal. The Examiner is provided with substantial discretion based upon a number of factors. With respect to the instant application, the primary reference relied upon on appeal remains the same. The theory of rejection remains the same. The sole change initiated by the examiner is reliance upon three secondary references disclosing particular refrigerant systems, stated by applicant for the record as being known.

Accordingly, no undue burden is seen in applicants responding to the new ground of rejection within the two month proscribed period.

The Petition is accordingly DENIED.



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